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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1941.

Nos. **154, 155, 156**

**EXHIBIT SUPPLY COMPANY,**

*Petitioner,*

*vs.*

**ACE PATENTS CORPORATION,**

*Respondent.*

**GENCO, INC.,**

*Petitioner,*

*vs.*

**ACE PATENTS CORPORATION,**

*Respondent.*

**CHICAGO COIN MACHINE COMPANY,**

*Petitioner,*

*vs.*

**ACE PATENTS CORPORATION,**

*Respondent.*

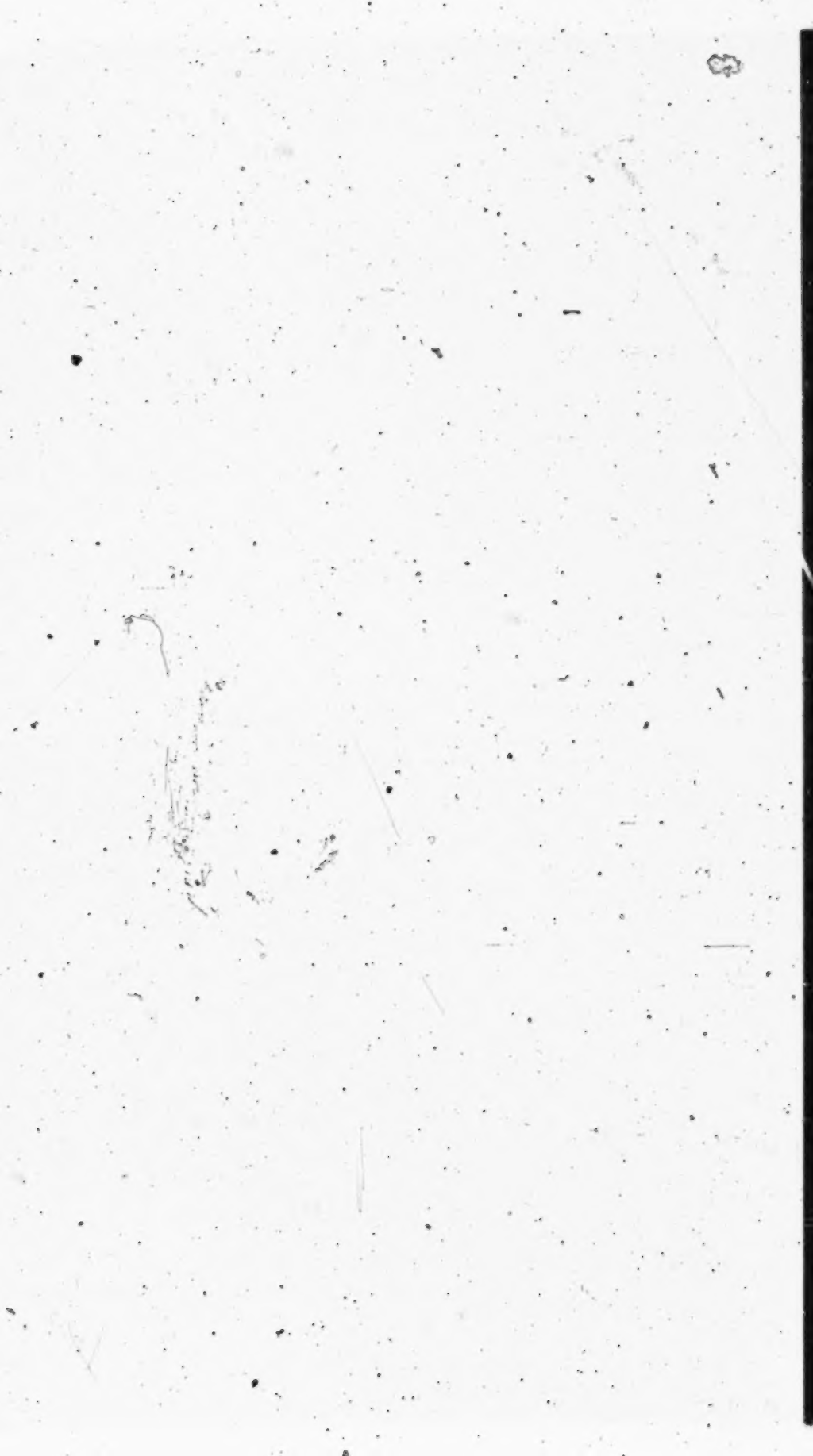
**BRIEF IN OPPOSITION TO PETITION FOR WRITS OF  
CERTIORARI.**

✓ **CASPER W. OOMS,**

*Attorney for Respondent.*

**JOHN A. RUSSELL,**

*Of Counsel.*



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BRIEF IN OPPOSITION TO PETITION FOR WRITS  
OF CERTIORARI.

**Foreword.**

The Petition for Writs of Certiorari in these causes should be denied because:

1. This is an ordinary patent case. The issues decided and sought to be reviewed here are wholly factual.



2. None of the character of reasons indicated by Rule 38 (5) are present in the instant causes:

(a) The decision is not in conflict with the decision of any other Circuit Court of Appeals as the patent has never been involved in other litigation.

(b) The Circuit Court of Appeals\* has adhered to and applied many decisions of this court rendered throughout a period of more than eighty years on the question of equivalency.

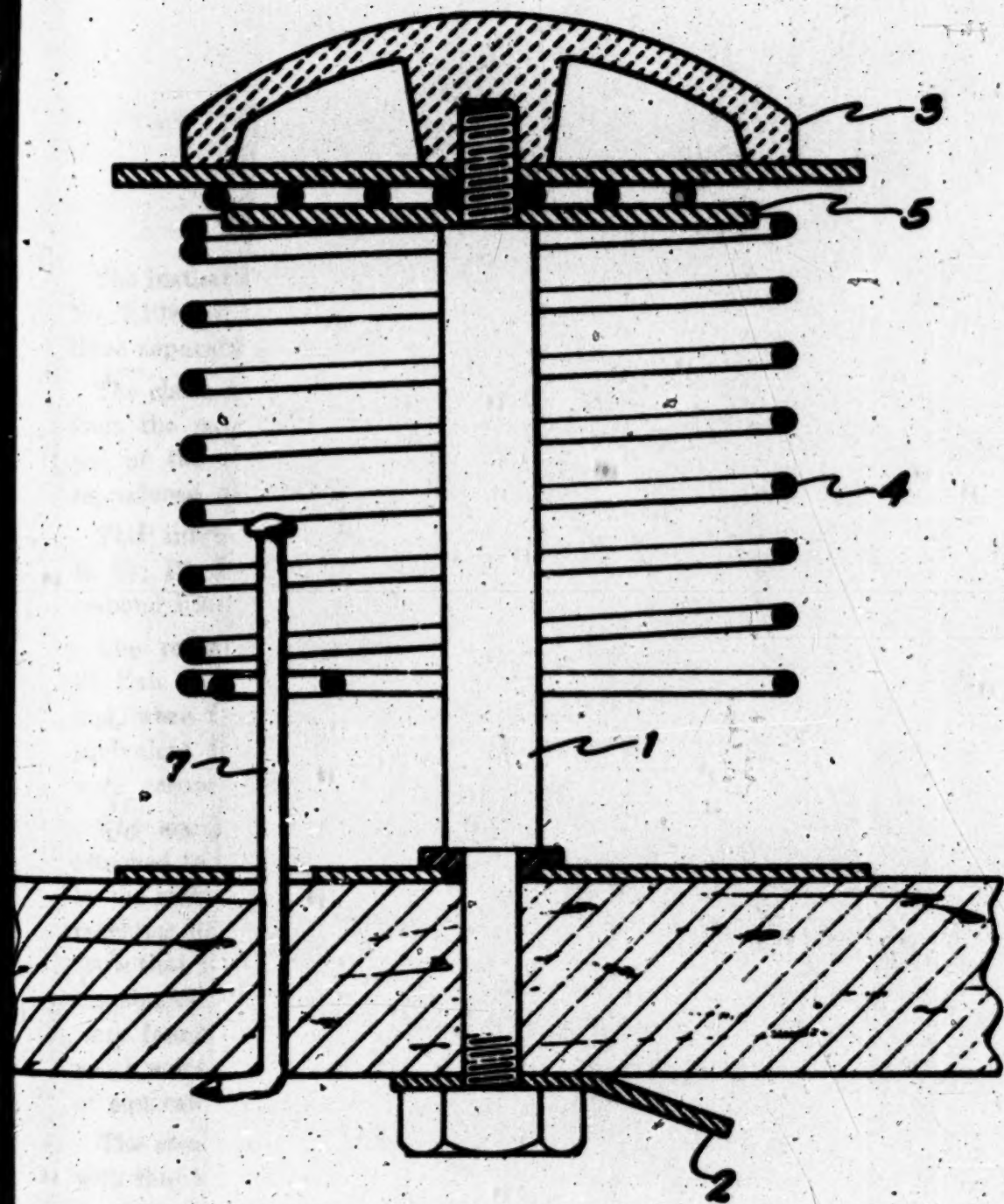
3. The present controversy is one falling squarely within the rule laid down in *Keller et al. v. Adams-Campbell Co., et al.*, 264 U. S. 314, 349, 68 L. Ed. 705, 708, wherein this Court said:

"Such an ordinary patent case, with the usual issues of invention, breadth of claims, and non-infringement, this court will not bring here by certiorari unless it be necessary to reconcile decisions of circuit courts of appeal on the same patent."

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\* Reported in 119 F. (2d) 349.





Plaintiff's Exhibit 5

Claim 4

In a ball rolling game having a substantially horizontal table over which balls are rollable, the combination with said table of

- (1) a substantially vertical standard anchored in said table with its lower end carrying on the underside of the table
- (2) a lead for an electric circuit and
- (3) its upper end extending a substantial distance above the top surface of the table,
- (4) a coil spring surrounding the standard,
- (5) means carrying said spring pendants from the upper portion of the standard above the table with the coils of the spring spaced from the standard to enable the spring to be resiliently flexed when bumped by a ball rolling on the table,
- (6) said spring being in the aforementioned circuit and constituting a conductor, and
- (7) conductor means in said circuit and embedded in the table at a point spaced from the standard and engageable by a portion of the spring when it is flexed to close the aforementioned circuit.

**The Claim In Suit Reads Directly  
On Plaintiff's Exhibit 5**

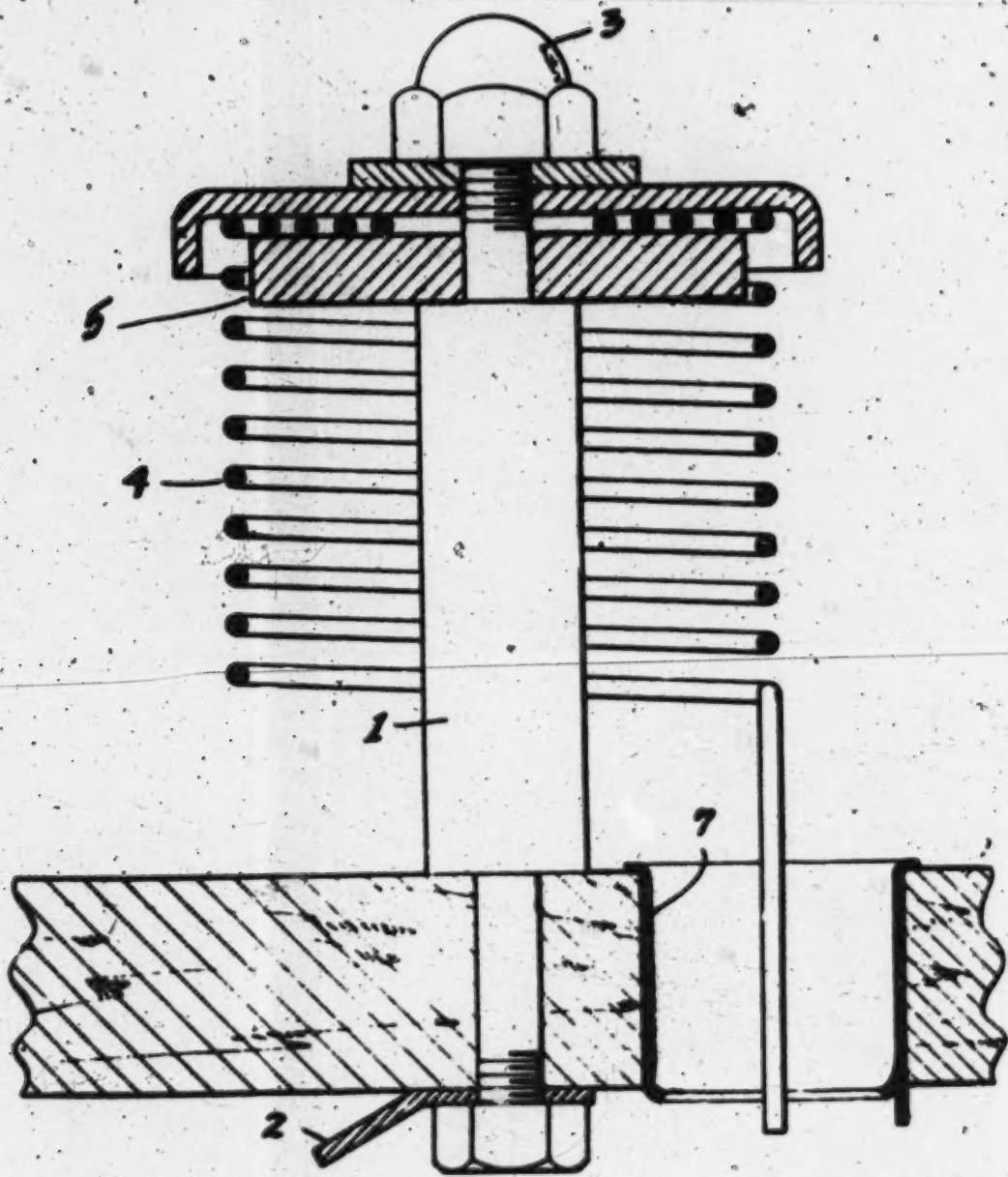
Claim 4

In a ball rolling game having a substantially horizontal table over which balls are rollable, the combination with said table of

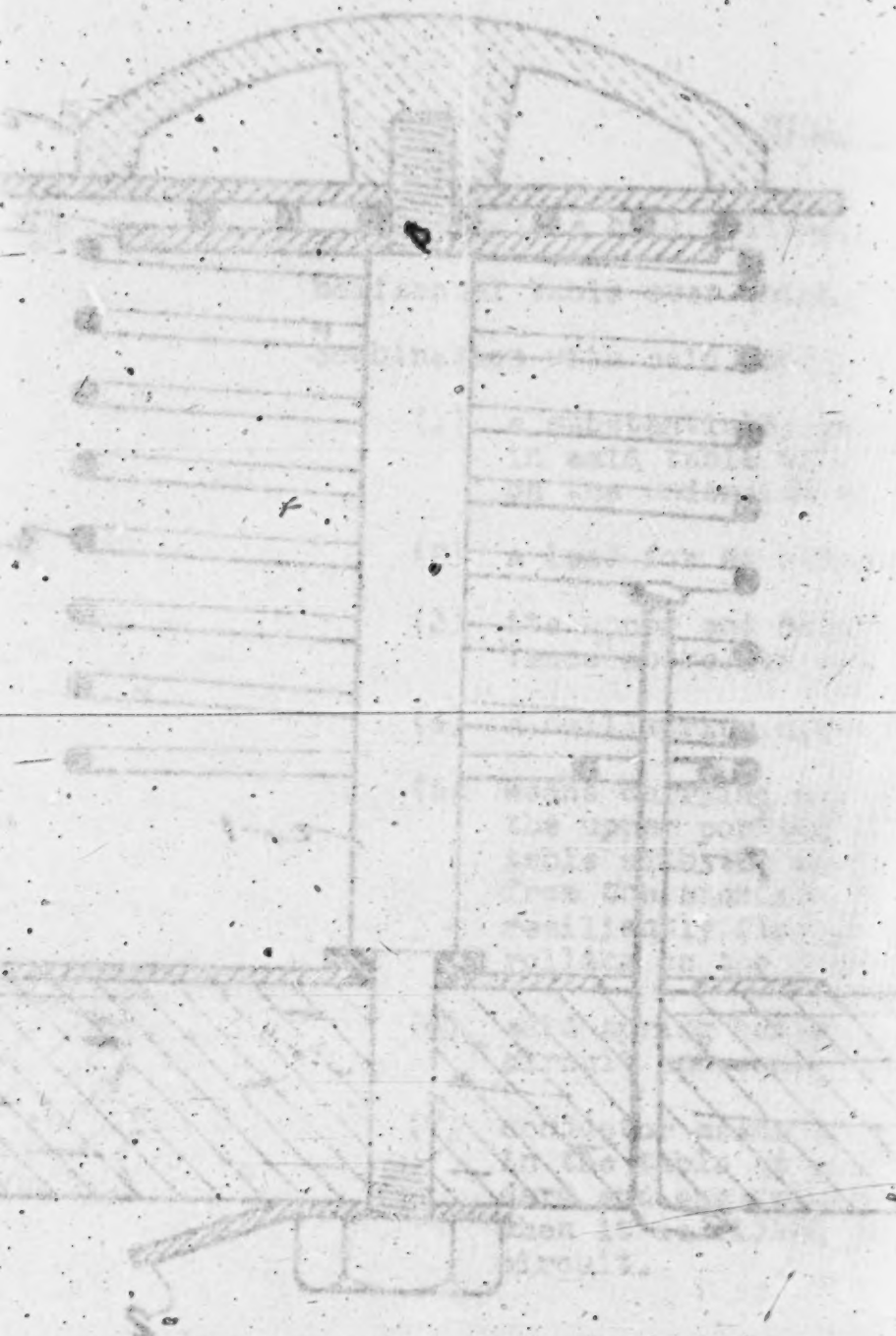
- (1) a substantially vertical standard anchored in said table with its lower end carrying on the underside of the table
- (2) a lead for an electric circuit and
- (3) its upper end extending a substantial distance above the top surface of the table,
- (4) a coil spring surrounding the standard,
- (5) means carrying said spring pendants from the upper portion of the standard above the table with the coils of the spring spaced from the standard to enable the spring to be resiliently flexed when bumped by a ball rolling on the table,
- (6) said spring being in the aforementioned circuit and constituting a conductor, and
- (7) conductor means in said circuit and embedded in the table at a point spaced from the standard and engageable by a portion of the spring when it is flexed to close the aforementioned circuit.

**The Claim In Suit Reads Directly  
On Plaintiff's Exhibit 5**





**Fig. 2 of the Nelson Patent**



Plaintiff's Exhibit 3

## ARGUMENT.

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### **This Is an Ordinary Patent Case.**

The instant suits involve a single claim of Nelson patent No. 2,109,678 (R. 548). Six infringing devices made by three separate defendants were involved.

The claim of the patent in suit together with one figure from the patent drawings and a corresponding view of one of the infringing devices (Pl. Exh. 5, R. 51) are reproduced on the accompanying chart.

This infringing device and three others (Pl. Exh. 6, R. 53; Pl. Exh. 7, R. 15; and Pl. Exh. 10, R. 35) also respond literally to the claim in suit.

The remaining two devices (Pl. Exh. 8, R. 17, and Pl. Exh. 9, R. 21), one of which is illustrated in the petition, were found to involve the substitution of a simple equivalent for the last element of the patent claim and were accordingly found to respond thereto.

The six infringing devices are illustrated on a chart attached to the back cover of this brief, each accompanied by the statement made by the Circuit Court of Appeals in reaching its decision of infringement. These statements show that the question involved was merely one of reading the single simple claim upon these devices, four of which were found to respond literally to the claim, and two of which were found to respond by application of the doctrine of equivalents to one of the seven elements.

The structural and functional identity of the six devices with that invented by Nelson and illustrated in the reproduction of the drawing of the patent on the accompanying chart is manifest.



**The Patent in Suit Is Not One Wherein the Critical Element of the Inventive Combination Was Inserted in the Specification or Claim After Filing.**

Petitioners place great reliance upon the recent opinions of this court in *Schriber-Schroth v. Cleveland Trust Company*, 305 U. S. 47, and 311 U. S. 211, which involved either the assertion of claims which incorporated a critical element relied upon to sustain invention and inserted into the patent after its filing, or the attempt to read into a patent claim a critical distinction abandoned by the cancellation of earlier claims. The present case bears no resemblance to those cases.

Each of the seven elements of the patent claim was shown in the drawings and fully described in the specification of the patent application when filed. No change was made in the drawing or specification at any time thereafter.

Both the Circuit Court of Appeals (R. 670-679) and the District Court (R. 485-488) fully considered and rendered decisions upon each of the contentions which the petitioners now make, except the single contention that the doctrine of mechanical equivalents should be abolished.

The petition, although attractively setting forth this major controversy as to the desirability of the doctrine of mechanical equivalents, really seeks a rehearing in this court on the factual issues upon which this case was determined, as the doctrine was recognized and applied by the Circuit Court of Appeals as it has been by this Court for more than eighty years.

### The Decisions of the Courts Below.

Petitioners represent that the District Court "recognized the patent to be of no 'great significance' (R. 487) in the art" (Petition, p. 3). The place of this patent in the art is of significance only to determine the scope of the equivalents to be accorded the claim in suit and petitioners therefore seek to derogate the patent by misquoting the District Court, which in fact said (R. 487):

"I do not think that this patent in suit is of great significance, but *I do think it was a step in advance in the art of making these pin games that may be said to have involved inventive genius*. No one before had used a spiral spring on the face of the board as both a target and a switch."

Petitioners also complain (Petition, p. 3) that the District Court "made neither finding of fact nor conclusion of law" anent the file wrapper estoppel defense. In the extended colloquy between counsel for petitioners and the Court upon the trial (R. 197-204), the District Court made its position clear as to the labored contention of file wrapper estoppel which has been made throughout this case, and is now sought to be reargued here. The District Court also made a finding of fact, No. 28 (R. 495), on this issue.

The Circuit Court of Appeals devoted more than half of its extended opinion to this question and quoted the claim in suit with interlineations to indicate the alterations made therein during the prosecution of the application. That quotation is as follows (matter in parentheses inserted, and matter cancelled shown with cancellation line running therethrough):

"(4) ~~7~~. In a ball rolling game having a substantially horizontal table over which balls are rollable, the combination with said table of a substantially vertical standard anchored in said table with its lower end carrying on the underside of the table a lead for an electric circuit and its upper end extending a sub-

stantial distance above the top surface of the table, a coil spring surrounding the standard, means carrying said spring pendantsly from the upper portion of the standard (ABOVE THE TABLE) with the coils of the spring spaced from the standard ~~and the lower end of the coil spring terminating at a distance above the top surface of the table~~ to enable the spring to be resiliently flexed when bumped by a ball rolling on the table, said spring being in the aforementioned circuit and constituting a conductor, and ~~other~~ conductor means (IN SAID CIRCUIT AND EMBEDDED IN) *carried by* the table at a point spaced from the standard and engageable by a portion of the spring when it is flexed to close the aforementioned circuit." (119 F. (2d) 352.)

The only significant alteration in the claim is that in which the term "carried by" was altered to "embedded in" the table. The entire dispute in the Circuit Court of Appeals resolved itself into the interpretation of the meaning of the words "embedded in"—clearly a simple factual issue. The Circuit Court of Appeals said (119 F. (2d) 352-353):

"The main controversy here is over the meaning of the word 'embed.' Webster defines it: 'To set solidly as in a bed; to lay in surrounding matter; to bed; as to embed a brick in mortar.' The Oxford English Dictionary defines it: 'To fix firmly in a surrounding mass of some solid material.' Appellants rely upon these two authorities, and construe each to mean that the thing embedded must not extend above or below the embedding material, which in this case is the top board of the pin table. The claim does not specifically require the contact to be below the top surface and above the bottom surface of the board, but of course it must be there, if appellants' construction of the definitions is correct. They urge its correctness because its consists with the intention of Nelson as expressed in his letter to the examiner, to which we have previously referred, and with the intention of the examiner who accepted the amendment upon receipt of the letter.

"We cannot accept appellants' construction of the definitions referred to. A reading of them convinces us that if a thing is solidly set in surrounding matter or if it is fixed firmly in a surrounding mass of solid material, it must be considered as being embedded in the matter or material regardless of whether it protrudes above or below the matter or material. In arriving at the intention of both the patentee and the examiner, we are also warranted in looking at the drawings and specifications. The drawing clearly discloses that the embedded ferrule, which is the complementary conductor, extends both above and below the table, and we think there can be no doubt that this was observed and approved by the examiner when he allowed the claim. So far as the ferrule is concerned, it is clear that the examiner did not approve appellants' construction of the definition of 'embed,' for neither the drawings nor the specification indicated any such limitation. The drawings indicate the contrary. In Nelson's letter it is not clear why he should have said that his conductor contact was to be embedded in the table, because the examiner's remarks on his last rejection of claim 7, and Nelson's amendment in response thereto required no such construction. Moreover, under any construction of the word 'embed' which has been suggested, it would seem impossible to set solidly and to fix firmly an electrical contact designed to open and close frequently. We speak here with respect to contact as an accomplished fact, as distinguished from points of contact which are necessarily used in making the contact.

"The later embodiments of appellee's claim have further extended the ferrule upwardly above the table top, yet its bottom is set solidly and fixed firmly in the surrounding solid wood of the table top, and we think it must be considered as embedded therein. We hold there is no file wrapper estoppel here."

The Circuit Court of Appeals did not, as petitioners represent to this court, base its reasoning upon the applicant's "forecast"—a term first used by petitioners and by them made the pivot point of the synthetic controversy

presented by the petition—in the communications passing between him and the Patent Office, but based its decision entirely upon the meaning of the word “embed” and its significance in view of the disclosure made in the patent application as filed.

**The “Questions Presented” by the Petition Are Not Present in This Case.**

The first “question presented” by the petition, whether the scope of a patent is limited by its claims or may be enlarged therebeyond by “the so-called doctrine of mechanical equivalents,” is not present in this case. The Circuit Court of Appeals held the claim in suit infringed because of the presence of each of its elements in the six infringing structures—in four of them by literal response, and in two to them by the substitution of a simple and obvious equivalent of one of the elements. The claim was not enlarged.

The second “question presented” by the petition asks whether “an informal remark (in one of the applicant’s communications with the Patent Office) about an alternative structure, not originally suggested or claimed, render inapplicable the rule that, a claim which was rejected and surrendered during the pendency of an application cannot be revived and restored to a patent, either by construction or by applying the doctrine of mechanical equivalents of an allowed claim?”

That question is not present in this case. The Circuit Court of Appeals merely referred to the communications between the applicant and the Patent Office in reliance on a decision of this court, *Goodyear Dental Vulcanite Co. v. Davis*, 102 U. S. 222-227, cited by petitioners in the Circuit Court of Appeals in support of the argument that the “construction (of a patent) may be confirmed by what the patentee said when he was making his application.



The understanding of a party to a contract has always been regarded as of some importance in its interpretation." In reliance on this authority the Circuit Court of Appeals referred to the communications passing between the applicant and the Patent Office as confirming the recognition by both the applicant and the Patent Office that the simple reversal attempted in two of the infringing devices was incorporated in the structure described and claimed by the patent. That portion of the opinion relating to the significance of this correspondence is quoted in the chart appended to the back cover of this brief.

The third "question presented" by the petition propounds a question of file wrapper estoppel which is not found in the file wrapper of this application. Petitioners ask whether the presentation of a claim to cover an alternative structure not described in the original application and the acquiescence in the ruling that that structure is not disclosed estops the patentee from contending that the amended claim covers the alternative structure sought to be covered by the rejected claim. No state of facts to which that inquiry is pertinent is presented by this case. The only limitation written into the claim by the applicant was the substitution of the words "embedded in" for the words "carried by" the table. As the Circuit Court of Appeals said:

"Prior to this substitution of language, almost any form of conductor which was mounted on the table in any place or manner, permanently or movably, would have answered the language of the claim. The substitution was made to cover the preferred embodiment of the structure as shown in the drawing, and, as we have stated, it met what we consider the proper interpretation of the word 'embed.' As stated by appellee, it was important that the conductor be embedded in order that the fixed relationship between it and the coil spring would be insured. Its vertical position was unimportant except that it had to be within reach of the terminal

of the coil spring so as to form a contact. The position that was important was its horizontal relation to the coil spring. The position of the latter was fixed by the position of the standard that was likewise embedded in the pin table. With the conductor embedded in the table, there was a fixed and unyielding relationship between the two." (119 F. (2d) 354.)

**The "Reasons Relied Upon for Allowance of the Writs" Are Primarily Reasons of Policy Unrelated to This Case, and Urge That This Court Should Abandon the Doctrine of Equivalents Which Has Been Reaffirmed by This Court in a Myriad of Opinions Through Eighty Years.**

There are no new questions in this case. Petitioners frankly state that the object of this petition is to have this court reexamine the doctrine of mechanical equivalents, and to abolish it. The doctrine of mechanical equivalents was stated by this court more than eighty years ago and has been reaffirmed in numerous opinions:

*Winans v. Denmead*, 56 U. S. 330.

*Sewall v. Jones*, 91 U. S. 171.

*Ives v. Hamilton*, 92 U. S. 426.

*Machine Co. v. Murphy*, 97 U. S. 120, 125.

*Imhaeuser v. Buerk*, 101 U. S. 647.

*Duff v. Sterling Pump Co.*, 107 U. S. 636, 639.

*Rowell v. Lindsay*, 113 U. S. 97.

*Morley Sewing Machine Co. v. Lancaster*, 129 U. S. 263, 273.

*Hoyt v. Horne*, 145 U. S. 302.

*Miller v. Eagle Mfg. Co.*, 151 U. S. 186, 207.

*Deering v. Winona Harvester Works*, 155 U. S. 286.

*Westinghouse v. Boyden Power Brake Co.*, 170 U. S. 537, 575.

*Hobbs v. Beach*, 180 U. S. 383, 399.

*Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U. S. 405, 414-415.

*Abercrombie & Fitch Co. v. Baldwin*, 245 U. S. 198, 207.

*Hildreth v. Mastoras*, 257 U. S. 27, 36.

*Eibel Process Co. v. Minnesota & Ontario Paper Co.*, 261 U. S. 45, 63.

*Sanitary Refrigerator Co. v. Winters*, 280 U. S. 30, 41-42.

*Smith v. Snow*, 294 U. S. 1, 14-20.

Petitioners ingenuously urge that, "It is safe to say that patent litigation would be markedly reduced if the doctrine of mechanical equivalents were either clarified or abolished." (Petition, p. 6.) In reply, it may be said that it is equally safe to say that all litigation would be markedly reduced if all legal doctrines were either clarified or abolished.

The doctrine of equivalents is clear. No court has experienced any difficulty in its application. It requires no clarification.

There is reason for the doctrine of mechanical equivalents. The statute (Title 35, U. S. Code, Section 33) requires that a patentee who has invented a machine shall:

"Explain the principle thereof, and the *best mode* in which he has contemplated applying that principle, so as to distinguish it from other inventions; and he shall particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery."

All that the statute requires of the inventor is that in his specification he shall set forth the *best mode* of applying the principle of his invention. It does not require him to anticipate and disclose every conceivable mechanical variation and formal rearrangement which may be made of the parts of his machine. It requires him to point out that "which he claims as his invention." It does not require him to present a claim for every conceivable variant form



in which his invention may be embodied, without affecting the principle of its structure and operation.

It is obviously impossible for an inventor to anticipate and make a claim for every alternative form in which his invention may be incorporated. The mere physical labor in the Patent Office imposed by any such doctrine would preclude it as a practical method of administration of the patent laws. The Patent Office has long asserted as a ground of rejection the undue multiplicity of claims.

These considerations make evident why the doctrine of mechanical equivalents is a necessary part of the doctrines of patent interpretation. Its propriety has long been recognized by this court, and has never been better stated than in the opinion of Mr. Justice Stone in *Smith v. Snow*, 294 U. S. 1, 11.

"We may take it that, as the statute requires, the specifications just detailed show a way of using the inventor's method, and that he conceived that particular way described was the best one. But he is not confined to that particular mode of use since the claims of the patent, not its specifications, measure the invention. \* \* \* While the claims of a patent may incorporate the specification or drawings by reference, \* \* \* and thus limit the patent to the form described in the specifications, it is not necessary to embrace in the claims or describe in the specifications all possible forms in which the claimed principle may be reduced to practice. It is enough that the principle claimed is exemplified by a written description of it and of the manner of using it 'in such full, clear, concise, and exact terms' as will enable one 'skilled in the art to make, construct, compound and use the same.' "

**The Cases Cited in Petitioners' Argument Deal With Factual Situations Which Have No Parallel in This Case.**

Petitioners repeatedly assert the recent cases of *Schriber-Schroth v. Cleveland Trust Company*, 305 U. S. 47, and 311 U. S. 211, in support of their argument. These cases involved patents in which critical changes had been made during their prosecution. As this court said in the first case (305 U. S. 47 at 49):

"The principal question for decision is whether the court below rightly sustained the validity of two patents by including in the combination constituting the alleged invention of each an element which was not in terms described in one, and the description of which in the other was added only by amendment to the application after it was filed."

The change there involved was the alteration of a patent for a piston "by substituting, by way of amendment 'webs laterally flexible' for 'extremely rigid webs' in the description of his invention." (305 U. S. 56.) The Court held that the patent could not be validly so amended.

In the second case another piston patent was involved and it was sought to construe the claims in suit to correspond in scope with previously cancelled claims. This court held this could not be done under the familiar doctrine of file wrapper estoppel.

Obviously, these cases in no way conflict with the decision of the Circuit Court of Appeals in construing the terms of the patent according to their dictionary definitions.

**Conclusion.**

The decision of the Circuit Court of Appeals for the Seventh Circuit in this case religiously followed the doctrines long laid down by this court. Any controversy which petitioners assert is purely one of fact, a quarrel with dictionary definitions of terms.

The petition does not present a case for the allowance of the writs of certiorari sought and it is respectfully submitted that the petition should be denied.

Respectfully submitted,

CASPER W. OOMS,

*Attorney for Respondent.*

JOHN A. RUSSELL,

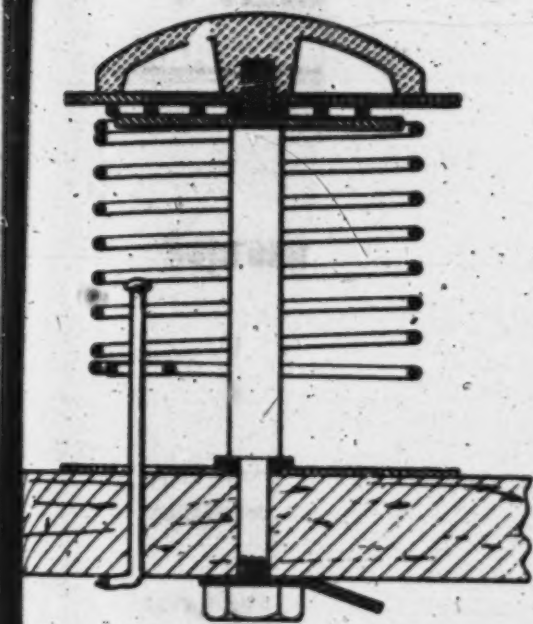
*Of Counsel.*

Chicago, Illinois,

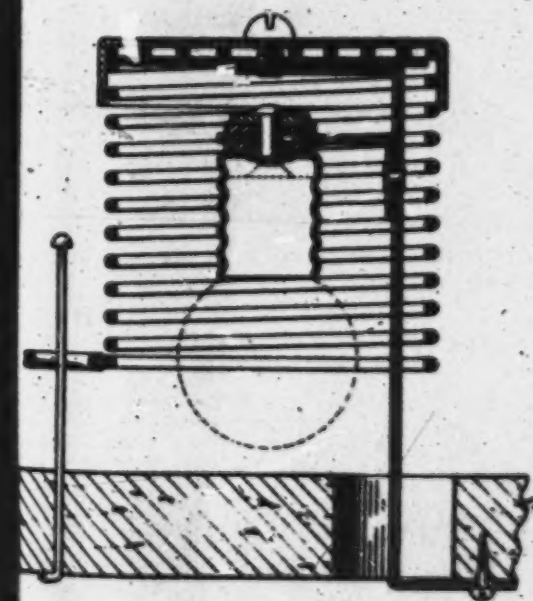
July 3, 1941.







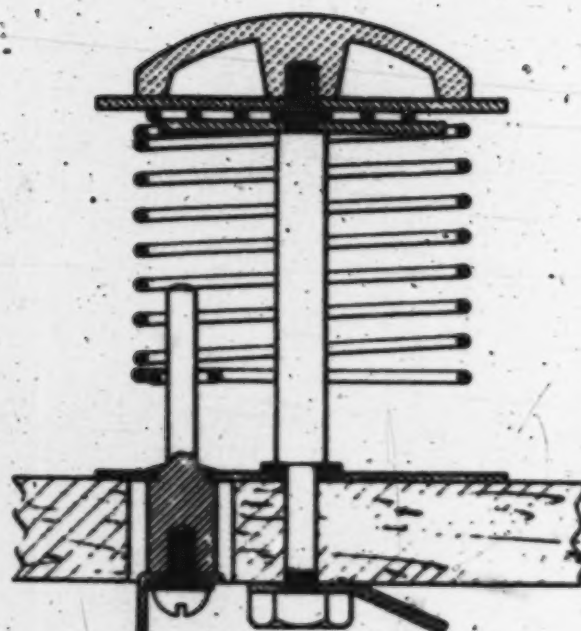
PLAINTIFF'S EXH. 5



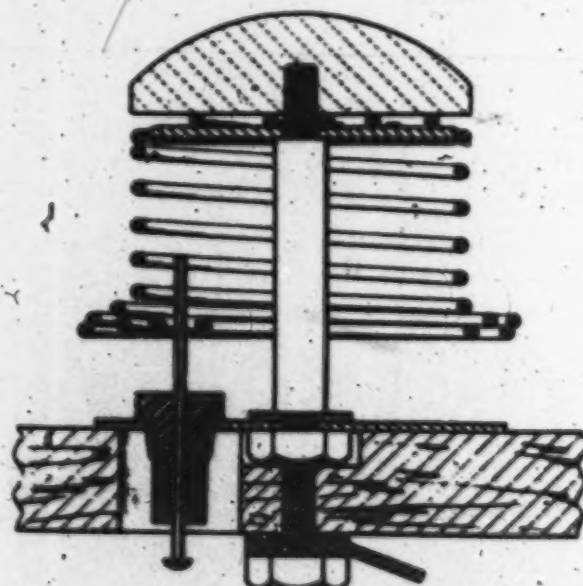
PLAINTIFF'S EXH. 7

On the question of infringement appellants contend that their devices, marked as plaintiff's exhibits 5 and 7, do not infringe because the pin, which is a nail driven through the block, which forms the conductor in the electrical circuit, is not embedded in the table. In view of what we have said with respect to the definition of the word "embed," we think there is no merit in this contention. Otherwise, the two devices read upon the claim and we think they infringe.

[7] With respect to the exhibits of Chicago Coin Machine Company and Geco, Inc., marked plaintiff's exhibits 6 and 10, it may be said that they differ from exhibits 5 and 7 only in that appellants have cut a large hole in the pin table at the point where the conductor is normally embedded and have covered this hole with an additional plate of metal which is secured to a pin table by the standard, and they have embedded the conductors in this metal plate. The metal plate serves no function except to support the pin which, in the previous device, was driven directly into the board. In other words, they have transformed the pin table from a single solid board into a structure composed of a solid board with an overlying metal layer. They have separated one unit into two parts which perform the same function in substantially the same manner, and we think infringement is clear. *Highway Appliances Co. v. American Concrete Expansion Joint Co.*, 7 Cir., 93 F.2d 113, and *Chicago Lock Co. v. Treatch*, 7 Cir., 72 F.2d 482.



PLAINTIFF'S EXH. 6

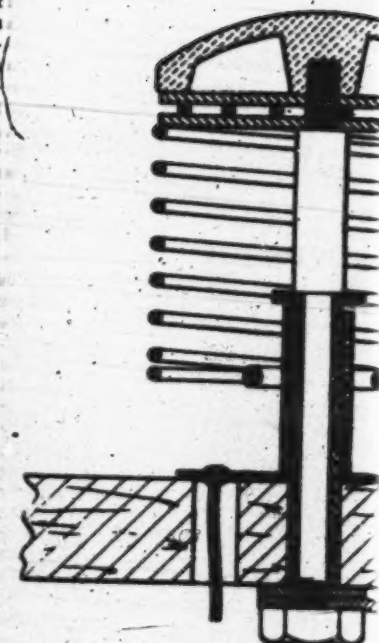


PLAINTIFF'S EXH. 10

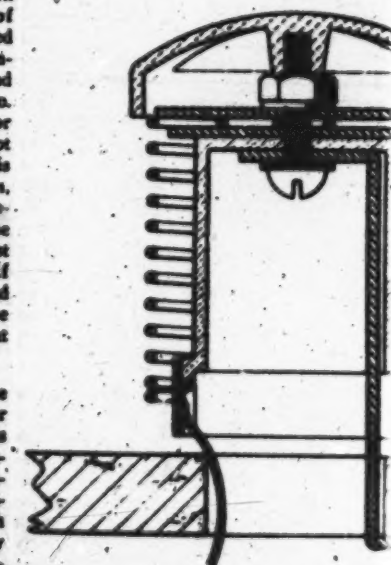
In the accused devices of the Exhibit Supply Company, referred to as plaintiff's exhibits 8 and 9, the laminations in exhibits 6 and 10 are removed, and there is substituted therefor a plastic core. Although this is not horizontally spread out to form the laminations of the pin table, it is attached to the pin table equally securely by means of the standard which is embedded in the board. As to these exhibits, appellants stress the fact that the terms of the Nelson patent were varied from a demand that the conductor be "carried by the table at a point spaced from the standard" to "embedded in the table at a point spaced from the standard." This argument likewise depends upon the correctness of appellants' definition of the word "embed." Prior to this substitution of language, almost any form of conductor which was mounted on the table in any place or manner, permanently or movably, would have answered the language of the claim. The substitution was made to cover the preferred embodiment of the structure as shown in the drawing, and, as we have stated, it met what we consider the proper interpretation of the word "embed." As stated by appellee, it was important that the conductor be embedded in order that the fixed relationship between it and the coil spring would be insured. Its vertical position was unimportant except that it had to be within reach of the terminal of the coil spring so as to form a contact. The position that was important was its horizontal relation to the coil spring. The position of the latter was fixed by the position of the standard that was likewise embedded in the pin table. With the conductor embedded in the table, there was a fixed and unyielding relationship between the two. That the vertical position of the conductor was unimportant for any reason except reaching the terminal of the coil spring, is clearly shown by Nelson's own anticipation, which he expressed in one of his communications to the Patent Office, of the simple reversal which defendants first adopted. He therefore realized that if the pin were embedded in the table and extended upward to meet a terminal on the coil spring, his structure would be present and readable upon the claim.

[8] Appellants at different times have varied the elevation at which the conductor was mounted, but we think it is obvious that they have never varied the one essential demand of the claim that the conductor be embedded either directly or indirectly in the pin table. We agree with appellee that exhibits 8 and 9 are merely mechanical equivalents of the Nelson structure, and we are convinced that appellants are in error in contending that the Nelson patent will not reach mechanical equivalence because of this change in terminology in the Patent Office. *Gray Telephone Pay Station Co. v. Baird Mfg. Co.*, 7 Cir., 174 F. 417; *Libbey Glass Mfg. Co. v. Albert Pick Co.*, 7 Cir., 63 F.2d 469.

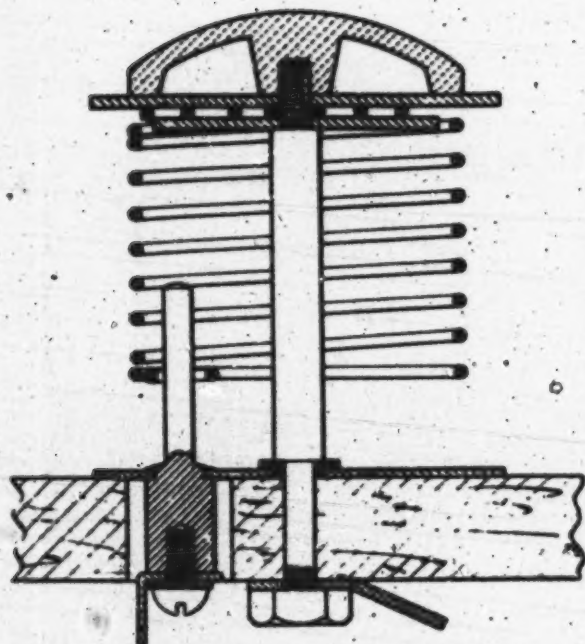
The decrees are affirmed.



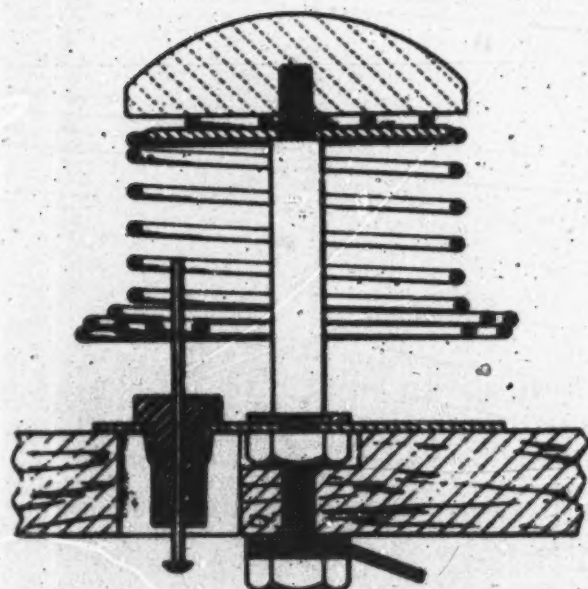
PLAINTIFF'S



PLAINTIFF'S I



PLAINTIFF'S EXH. 6

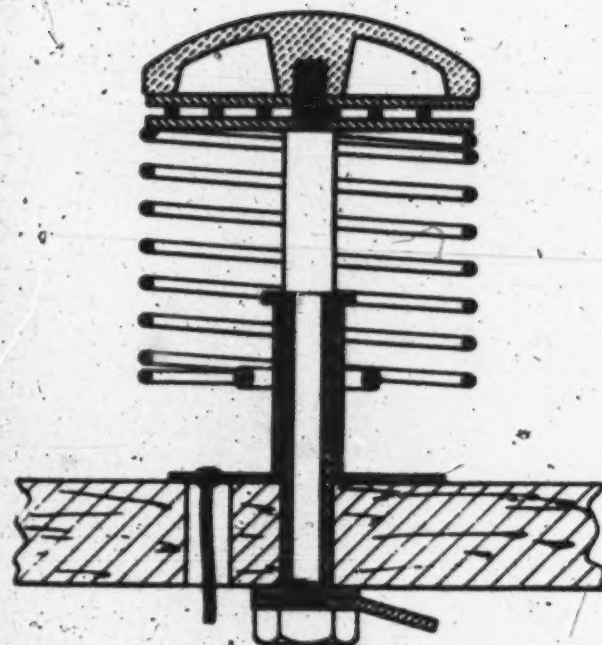


PLAINTIFF'S EXH. 10

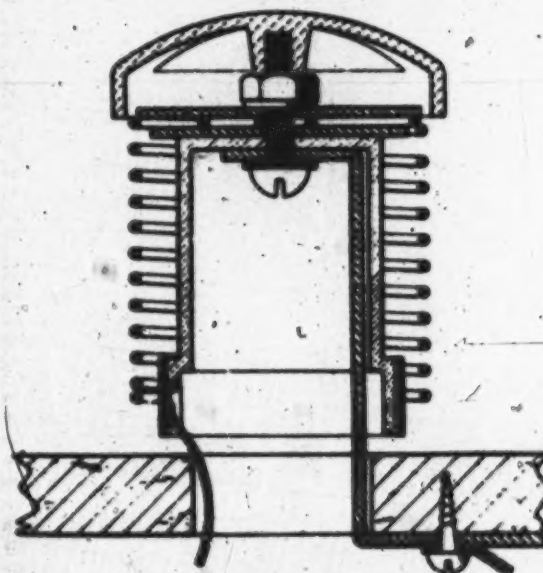
In the accused devices of the Exhibit Supply Company, referred to as plaintiff's exhibits 8 and 9, the laminations in exhibits 6 and 10 are removed, and there is substituted therefor a plastic core. Although this is not horizontally spread out to form the laminations of the pin table, it is attached to the pin table equally securely by means of the standard which is embedded in the board. As to these exhibits, appellants stress the fact that the terms of the Nelson patent were varied from a demand that the conductor be "carried by the table at a point spaced from the standard" to "embedded in the table at a point spaced from the standard." This argument likewise depends upon the correctness of appellants' definition of the word "embed." Prior to this substitution of language, almost any form of conductor which was mounted on the table in any place or manner, permanently or movably, would have answered the language of the claim. The substitution was made to cover the preferred embodiment of the structure as shown in the drawing, and, as we have stated, it met what we consider the proper interpretation of the word "embed." As stated by appellee, it was important that the conductor be embedded in order that the fixed relationship between it and the coil spring would be insured. Its vertical position was unimportant except that it had to be within reach of the terminal of the coil spring so as to form a contact. The position that was important was its horizontal relation to the coil spring. The position of the latter was fixed by the position of the standard that was likewise embedded in the pin table. With the conductor embedded in the table, there was a fixed and unyielding relationship between the two. That the vertical position of the conductor was unimportant for any reason except reaching the terminal of the coil spring, is clearly shown by Nelson's own anticipation, which he expressed in one of his communications to the Patent Office, of the simple reversal which defendants first adopted. He therefore realized that if the pin were embedded in the table and extended upward to meet a terminal on the coil spring, his structure would be present and readable upon the claim.

[8] Appellants at different times have varied the elevation at which the conductor was mounted, but we think it is obvious that they have never varied the end essential demand of the claim that the conductor be embedded either directly or indirectly in the pin table. We agree with appellee that exhibits 8 and 9 are merely mechanical equivalents of the Nelson structure, and we are convinced that appellants are in error in contending that the Nelson patent will not reach mechanical equivalence because of this change in terminology in the Patent Office. *Gray Telephone Pay Station Co. v. Baird Mfg. Co.*, 7 Cir., 174 F. 417; *Libbey Glass Mfg. Co. v. Albert Pick Co.*, 7 Cir., 63 F.2d 405.

The decrees are affirmed.



PLAINTIFF'S EXH. 8



PLAINTIFF'S EXH. 9